

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Deutsche Bank National Trust Co.)	CASE NO. 1:06 CV 1100
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Angela Kane, et al.,)	<u>Summary Judgment and Decree in</u>
)	<u>Foreclosure</u>
)	
Defendants.)	

INTRODUCTION

This matter is before the Court upon plaintiff's Notice of Filing of Modified Payment History (Doc. 34). In light of plaintiff's submission and defendants' failure to respond, summary judgment in favor of plaintiff is warranted and a decree in foreclosure is hereby issued.

DISCUSSION

This is a foreclosure action. This Court previously granted summary judgment in favor of plaintiff with regard to liability. The Court, however, concluded that there was a question of fact with regard to the amount plaintiff is owed. Specifically, there was a dispute surrounding

one of defendant Angela Kane's mortgage payments. Plaintiff submits a revised payments history in which plaintiff expressly indicates that it is no longer seeking recovery of that disputed payment. Accordingly, there are no questions of fact with regard to damages and plaintiff is entitled to judgment as a matter of law.

Therefore, it is ORDERED, that unless the sums hereinabove found to be due to Plaintiff Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc., Asset-Backed Pass Through Certificates, Series 2003-5, under the Pooling and Servicing Agreement Dated as of April 1, 2003, and the costs of this action, be fully paid within ten (10) days from the date of the entry of this decree, the equity of redemption of the defendants-titleholders in said real estate shall be foreclosed and the real estate sold, free and clear of the interest of all parties herein, and an order of sale shall issue to the Master Commissioner, directing him to appraise and sell same at public sale, as upon execution and according to law, after having the property advertised according to law, particularly 28 U.S.C. §§ 2001 and 2002. The Master Commissioner shall report his proceedings to this Court.

It is ORDERED FURTHER, that the Master Commissioner shall send counsel for the party requesting the Order of Sale a copy of the publication notice promptly upon its first publication.

In the event that an Order of Sale is returned by the Master Commissioner unexecuted, subsequent Orders of Sale shall issue in accord with the Court's instructions.

It is ORDERED FURTHER, that the Master Commissioner, upon confirmation of said sale, shall pay from the proceeds of said sale, upon the claims herein found, the amounts thereof in the following order of priority:

1. To the Treasurer of Cuyahoga County, the taxes and assessments, due and payable as of the date of transfer of the property after the Master Commissioner's Sale.
2. To the plaintiff Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc., Asset-Backed Pass Through Certificates, Series 2003-5, under the Pooling and Servicing Agreement Dated as of April 1, 2003, the sum of \$129,171.79 with interest at the rate of 9.3 percent per annum from July 1, 2005, together with late charges, plus advances, if any, made by Plaintiff to protect its interest in the Property, plus costs and expenses incurred by Plaintiff to enforce its rights under the Note and Mortgage.
3. To Plaintiff the sums advanced for real estate taxes, hazard insurance and property protection.
4. The balance of the sale proceeds, if any, shall be held by the Master Commissioner to await further orders of distribution by this Court.

The purchaser of the property being sold is hereby subrogated to all rights of the lienholders in the premises to the extent of such payment and for the protection of its title.

Because Plaintiff is the first and best lienholder junior only to real estate taxes, if it is the successful bidder at the Master Commissioner's sale, Plaintiff shall not be required to make a deposit at the time of sale. Plaintiff shall pay the balance of all the Master Commissioner's costs due and owing, and real estate taxes due and payable, when they are ascertained.

Upon distribution of the proceeds of sale as described above and entry of an order confirming the sale and ordering a deed to the purchaser, a certified copy of the entry shall be

issued to the Cuyahoga County Recorder directing him or her to enter the same on the margin of the records of the mortgages and liens, releasing the liens adjudicated herein from the premises.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 1/22/07